

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

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|---------------------------------------------|---|-----------------------|
| MICHAEL SHANE PEARCE, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. CIV-23-619-D |
| |) | |
| MARTIN O'MALLEY ¹ , Commissioner |) | |
| of Social Security, |) | |
| |) | |
| Defendant. |) | |

ORDER

Before the Court is Plaintiff's Application for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. §2412 [Doc. No. 16]. Plaintiff seeks an award of fees in the amount of \$6,779.70 to compensate his attorney for legal services provided in the case (27.9 hours of attorney time at \$243.00 per hour). Plaintiff is the prevailing party in this action under 42 U.S.C. § 405(g) by virtue of the Judgment and Order entered November 20, 2023 [Doc. Nos. 14, 15]. Defendant has responded by stating that he does not oppose the \$6,779.70 requested, consistent with *Astrue v. Ratliff*, 560 U.S. 586, 595-98 (2010), *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007), and *Brown v. Astrue*, 271 Fed. App'x 741, 743-44 (10th Cir. 2008). *See* Def.'s Resp. at 1-2.


After consideration of the law and the case record, and accepting the representations in Defendant's Response, the Court finds: (1) the Commissioner's position in the case was

¹ Mr. O'Malley became the Commissioner of Social Security on December 20, 2023. *See* Def.'s Resp. [Doc. No. 17] at 1 n.1. Under FED. R. CIV. P. 25(d), he is "automatically substituted as a party."

not substantially justified; (2) Plaintiff is entitled to an award of attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d); and (3) the amount of fees requested is reasonable.

IT IS THEREFORE ORDERED that Plaintiff's Application for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. §2412 [Doc. No. 16] is **GRANTED**. The Court orders an award of attorney fees to Plaintiff pursuant to the Equal Access to Justice Act in the amount of \$6,779.70. Should an additional fee award under 42 U.S.C. § 406(b) subsequently be authorized, Plaintiff's attorney shall refund the smaller amount to Plaintiff as required by *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED this 4th day of January, 2024.



TIMOTHY D. DeGIUSTI
Chief United States District Judge